IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2007

CORAM

THE HONOURABLE MR. JUSTICE K. MOHAN RAM

CRIMINAL ORIGINAL PETITION NOS.30366 AND 30338 OF 2007
AND
M.P.NOS.1 TO 3 AND 1 TO 3 OF 2007 IN BOTH THE CRL.O.PS.

T.L. Vedachalam ... Petitioner in both the Crl.O.Ps.

The State rep. by
The Inspector of Police
SPE/CBI/ACB/Chennai. ... Respondent in both the Crl.O.Ps.

Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the records of the case in C.C.Nos.23 and 22 of 2004 from the file of the learned Principal Special Judge for C.B.I. Cases, Chennai, quash the entire proceedings from the First Information Report, dated 30.4.2002, Charge Sheet Nos.2 and 1, dated 28.4.2004 respectively and all further proceedings against the petitioner/A1, therein.

For Petitioner : Mr. V. Ramana Reddy

For Respondent : Mr. Hasan Mohamed Jinnah,
G.A. Crl.Side.
Special Public Prosecutor for
CBI Cases.

O R D E R

The petitioner in the above criminal original petitions is the first accused in C.C.Nos.23 and 22 of 2004 on the file of the Principal Special Judge for CBI Cases, Chennai.

2. Both the above said cases, the petitioner is facing trail for charges under Sections 120-B r/w 420, 468, 468 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The above petitions have been filed seeking to quash all further proceedings in the said cases on identical grounds.

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3. Heard Mr.V. Ramana Reddy, learned counsel appearing for the petitioner and Mr.Chandrasekaran, learned Special Public Prosecutor for CBI Cases appearing for the respondent.

4. The learned counsel for the petitioner submits that the averments in the First Information Report on the face of it would not constitute any offences as against the petitioner herein; the charge sheets and the statements relied on for the same are also inherently defective in particulars and there are no nexus between the actual procedures of process of settlement of claim and the charges framed against the petitioner and as such the criminal proceedings are liable to be quashed; there were no bogus motor claims; when the claims were submitted through reputed Finance Company, there is no men rea or material to show prima facie that there was a criminal conspiracy between the petitioner herein and the vehicle owners; none of the ingredients of the offences under Sections 120-B, 420, 468 or 471 IPC or the offence under Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 are made out either in the materials available on record or from the statements purportedly recorded by the Police, or even from the evidence given by P.Ws.1 to 7 in the trial; under Section 197 of Cr.P.C. and under Section 19(1)(c) of the Prevention of Corruption Act, 1988, it is mandatory that previous sanction to prosecute should have been obtained from the competent authority and in this case, no such sanction order was filed along with the charge sheet but the same was filed after taking cognizance and hence the very cognizance taken by the Court below is liable to be quashed.

5. In support of his above contention, the learned counsel for the petitioner relied upon certain decisions. The learned counsel by drawing the attention of this Court to The conduct, Discipline and Appeal Rules, 1975 and particularly to schedule B thereto, which is available at page No.2 of the typed set submitted that the petitioner was working as Assistant General Manager and as such in respect of Assistant Managers, the Appointing Authority and the Disciplinary Authority is the Assistant General Manager and Shri S.Sundaresan, Assistant General Manager, who is said to have issued the sanction order and was examined as P.W.1 was the Assistant General Manager, Miscellaneous, Motor Underwriting & Claims, Loss Control, Grievances, R & D and Technical Services Cell & Solatium Fund. The said Sundaresan, who was looking after the said portfolio is not competent to issue the sanction order.

6. I have carefully considered the above said submissions made by the learned counsel for the petitioner.

7. At the outset, it has to be pointed out that admittedly the trial in both the cases has commenced and P.Ws.1 to 7 have also been examined and the trial is almost coming to a close and the

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cases are pending right from the year 2004 and at this belated stage, the above two criminal original petitions have been filed seeking to quash the proceedings. All the contentions that have been urged in the above said petitions before this Court could very well be urged before the trial Court at the time of arguments, but instead, the petitioner has chosen to seek quashing of the proceedings at the belated stage.

8. It is seen from the petition in Crl.O.P.No.30338 of 2007 that earlier the petitioner had filed a discharge petition in Crl.M.P.No.1276/2007 before the trial Court in C.C.No.22 of 2004 and the same came to be dismissed by order dated 30.7.2007 and challenging the correctness of the said order, the petitioner had filed a criminal revision before this Court and the criminal revision petition also came to be dismissed by this Court. But yet the petitioner has filed the above criminal original petition urging the same grounds.

9. It is seen from the order dated 13.9.2005 passed in Crl.M.P.Nos.319 and 320 of 2005 in C.C.Nos.22 and 23 of 2004 respectively that the prosecution had filed the petitions under Section 311 read with 173 of Cr.P.C. seeking permission of the Court to examine S.Sundaresan, Assistant General Manager as an additional witness in the two cases and those applications were allowed. In the said order, the learned Special Judge observed as follows:-

> " Therefore, it is very clear that the prosecution had already obtained the sanction order from the competent authority and has also enclosed the same along with the final report enabling this Court to take cognizance of the cases against the accused. In the said circumstances, the contention of the accused that the prosecution has not obtained the sanction order from the competent authority before laying the final report and therefore the same would affect the very basis of the prosecution case cannot be accepted."

It is further observed in paragraph -7 of the said order as follows:-

> " 7. It is contended by the 1st accused that the copy of the sanction order has not been furnished to him. But, there is an endorsement made by the accused as having received the copies of documents D1 to D112 in R.C.19/02, C.C.23/04 and also the documents D1 to D189 (in bounded books) in R.C.19/A/02, C.C.22/04."

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10. Therefore, from the above said observations contained in the above said order, the contention of the learned counsel for the petitioner that the prosecution had not filed the sanction order along with the charge sheet is liable to be rejected and it is accordingly rejected.

11. It is also seen from the evidence of P.W.1 - S.Sundaresan, Assistant General Manager that P.W.1 has been questioned regarding his competency to give sanction to prosecute the petitioner. The sanction orders have also been marked through him. Therefore, it is for the trial Court to consider from the evidence of P.W.1 and other connected materials available on record as to whether the sanction order is valid or not. At this stage, this Court cannot go into the contested issue.

12. The other contentions put forth by the learned counsel for the petitioner have to be considered only by appreciating the evidence on record and other documentary evidence produced by the prosecution and that can be done only by the trial Court and not by this Court at this stage.

13. In *AMOLAK SINGH CHHABRA VS. STATE OF MADHYA PRADESH* reported in *2007(2) Crimes 222 (M.P.)*, paragraph-18, reads as follows:-

> " 18. As the question of obtaining prior sanction for prosecution of a public servant is a mixed question of facts and law, and material collected by the investigating agency during investigation against the present petitioner are yet to be examined by the Trial Court, therefore, this Court refrain from making any observations on the quality of evidence collected by the prosecution regarding alleged offence or its nature, so far as present petitioner is concerned, and leave this aspect of the matter with the Trial Court."

14. Further, as pointed out above, the petitioner has filed the above quash petitions after the examination of seven witnesses and at the stage when the trial is almost coming to a close and at this belated stage, the criminal original petitions should not be entertained by this Court.

15. In *AMAR CHAND AGARWALA VS. SHANTI BOSE AND ANOTHER* reported in *AIR 1973 SUPREME COURT 799*, it has been laid down as follows:-

> " (A) Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two

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prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence."

16. The above said decision squarely applies to the facts of the present case.

17. Therefore, for the forgoing reasons, the above criminal original petitions fail and accordingly, they are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Kb

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The State rep. by
   The Inspector of Police
   SPE/CBI/ACB/Chennai.

2. The Special Public Prosecutor
   for CBI Cases, High Court,
   Madras - 104.

2 ccs to Mr.V.Ramana Reddy, Advocate, SR.70669.

SJ (CO)

dv/7.12.

CRL.O.P.NOS.30366
AND 30338 OF 2007

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